



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
**MAY 21 2014**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Barbara Bontrager, Chief Executive Officer  
United Wisconsin Grain Producers, LLC  
W1231 Tessmann Drive  
Friesland, Wisconsin 53935

Dear Ms. Bontrager:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the matter regarding United Wisconsin Grain Producers, LLC, docket number CAA-05-2014-0029. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on May 21, 2014.

Pursuant to paragraph 55 of the CAFO, United Wisconsin Grain Producers, LLC must pay the civil penalty within 30 days of June 20, 2014. Your electronic funds transfer must display the case name United Wisconsin Grain Producers, LLC and the docket number CAA-05-2014-0029.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel, (312) 886-6831.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall, Chief  
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

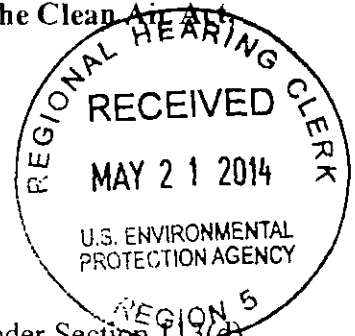
cc: Ann Coyle Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Cynthia A. King/C-14J  
Bill Baumann, Thomas Rouchar, WDNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No.</b> CAA-05-2014-0029
	)	
<b>United Wisconsin Grain Producers, LLC</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Friesland, Wisconsin</b>	)	<b>Under Section 113(d) of the Clean Air Act</b>
	)	<b>42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
	)	

**Consent Agreement and Final Order**

**Preliminary Statement**



1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2).and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is United Wisconsin Grain Producers, LLC (UWGP or Respondent), a limited-liability corporation doing business in Wisconsin.
4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Section 111(b) of the Act, 42 U.S.C. § 7411(b), requires EPA to publish a list of categories of sources, which, in EPA's judgment, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare, and to promulgate standards of performance for new stationary sources within these categories. These standards are known as "new source performance standards" or "NSPS."

10. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the owner or operator of any new source from operating such source in violation of any standard of performance applicable to such source.

11. Under Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2), "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or if earlier, proposed regulations) prescribing a standard of performance which will be applicable to such source.

12. Under Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3), "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

13. Under Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA promulgates NSPS for categories of sources and codifies those requirements at 40 C.F.R. Part 60.

14. The NSPS for Standards of Performance for Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984 is codified at 40 C.F.R. Part 60, Subpart Kb.

15. Under the NSPS, Subpart Kb, 40 C.F.R. § 60.113b(2), the facility must conduct annual inspections of storage tanks.

16. The NSPS for Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 is codified at 40 C.F.R. Part 60, Subpart VVa.

17. Under the NSPS, Subpart VVa, the facility is required to demonstrate compliance with the standard (i.e. to conduct a LDAR program) as specified in 40 C.F.R. § 60.482-1a.

18. Under the NSPS, Subpart VVa, at 40 C.F.R. § 60.487a, the facility is required to submit semiannual reports.

19. EPA approved the Wisconsin Administrative Code NR (NR) 406 Construction Permits effective February 2, 1995, 60 Fed. Reg. 3543, as part of the Wisconsin State Implementation Plan. The Wisconsin Department of Natural Resources has issued federally-enforceable air pollution control construction permits (Permits) to UWGP for its ethanol facility in Friesland, Wisconsin (the facility).

20. Condition 1.B.1.b.2 of Permit 06-DCF-184 (and all subsequent Permits) requires the facility to meet the temperature set point of 1400° Fahrenheit (°F) when the Biomethanor bypass flare is used. (NR 407.09(1)(c)).

21. Condition 1.E.1.a.1 of Permit 06-DCF-184 (and all subsequent Permits) requires the facility to meet a 98.7% destruction efficiency for VOCs from the fermentation process via the use of scrubbers. (NR 406.10; NR 424.03(2)(c)).

22. Condition 1.E.1.a.2 of Permit 06-DCF-184 (and all subsequent Permits) requires the facility to meet an emission limit for VOCs of 3.7 pounds per hour (lb/hr) from the fermentation process via the scrubbers. (NR 406.10; NR 424.03(2)(c)).

23. Condition 1.E.1.b.2 of Permit 06-DCF-184 (and subsequent permits through 08-DCF-120-RI) requires the facility to achieve a pressure drop across the scrubbers within a range of 4 to 8 inches of water (in H<sub>2</sub>O). (NR 407.09(1)(c)).

24. Condition 1.E.1.b.2 of Permit 10-DCF-137 requires the facility to achieve a pressure drop across the scrubbers within a range of 3 to 11 inches of water (in H<sub>2</sub>O). (NR 407.09(1)(c)).

25. Condition 1.E.1.b.3 of Permit 06-DCF-184 (and all subsequent Permits) requires the facility to achieve a minimum scrubber water flow rate of 25 gallons per minute (gpm) for each scrubber. (NR 424.03).

26. Condition 1.E.4.a.1 of Permit 06-DCF-184 (and subsequent permits through 08-DCF-120-RI) requires the facility to meet an emission limit for acetaldehyde of 1.90 lb/hr from the fermentation process via the scrubbers. (NR 406.10; NR 445.07).

27. Condition F.1.b.3 of Permit 06-DCF-184, and subsequently condition 1.FF.1.b.3 of Permit 08-DCF-120 (and all subsequent permits), requires the facility to meet a temperature set point of 1400° F (1300° F for the summer months) for the Tanker Truck Loading Rack with flare. (NR 407.09(1)(c); 406.10).

28. Condition 1.ZZZ.3.a of Permit 10-DCF-137 requires the facility to prepare and maintain a Malfunction Prevention and Abatement Plan (MPAP) (NR 439.11(1)).

29. Condition 1.G.1.b.2 of Permit 06-DCF-184 (and all subsequent Permits) requires the facility to conduct annual inspections of storage tanks T61, T62 (denatured ethanol), T63, T65 (undenatured ethanol) and T64 (gasoline). (NR 440.285(4)(a)2).

30. Condition 1.G.1.c.4.b of Permit 06-DCF-184 (and all subsequent Permits) requires the facility to keep records of annual inspections of ethanol storage tanks T61, T62 (denatured), T63, T65 (undenatured) and T64 (gasoline). (NR 440.285(6)(a)).

31. On September 3, 2013, following the request of UWGP, WDNR issued revised Permit Nos. 10-DCF-137-R1 and 12-DCF-154. These permits eliminated the temperature set points referenced in paragraphs 20 and 27, above.

32. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that occurred after March 15, 2004 through January 12, 2009, and a civil penalty of up to \$37,500 per day of each violation, with a maximum of \$295,000, for violations that occurred after January 12, 2009, and a civil penalty of \$37,500 per day for each violation, with a maximum of \$320,000 for violations that occur after December 5, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

33. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

34. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

**Factual Allegations and Alleged Violations**

35. UWGP's facility has been in operation since April 2005.

36. Since April 2005, the facility has been subject to the requirements of Section 111 of the CAA, 42 U.S.C. § 7411, and the implementing regulations at 40 C.F.R. Part 60, Subpart Kb.

37. Since November 13, 2007, the facility has been subject to the requirements of Section 111 of the CAA, 42 U.S.C. § 7411, and the implementing regulations at 40 C.F.R. Part 60, Subpart VVa.

38. EPA inspected the UWGP facility on July 28, 2011.

39. EPA issued an Information Request under Section 114 of the Act, 42 U.S.C. § 7414, to UWGP on October 5, 2011. UWGP provided the requested information on December 15, 2011.

40. On March 23, 2012, EPA issued a Notice and Finding of Violation to UWGP.

41. On 37 days between June 8, 2008 and June 21, 2013, UWGP failed to meet the temperature set point of 1400° Fahrenheit (°F) for the Biomethanator bypass flare as required by Permit 06-DCF-184 condition 1.B.1.b.2. UWGP installed the temperature monitoring device in a location that failed to accurately record the temperature in the flare. After identifying the issue in the NOV, and prior to meeting with EPA, UWGP requested that WDNR remove the requirement from its permit.

42. From November 13, 2007 until September 1, 2010, UWGP failed to meet the 98.7% destruction efficiency for VOCs from the fermentation process via the scrubbers as required by Permit 06-DCF-184 condition 1.E.1.a.1.

43. From November 13, 2007 until March 30, 2010, UWGP failed to meet the emission limit for VOCs of 3.7 lb/hr from the fermentation process via the scrubbers as required by Permit 06-DCF-184 condition 1.E.1.a.2.

44. On 908 days between November 13, 2007 and March 4, 2011, UWGP failed to achieve a pressure drop across the scrubbers within a range of 4 to 8 in H<sub>2</sub>O as required by Permit 06-DCF-184 condition 1.E.1.b.2. After identifying the issue in the NOV, and prior to meeting with EPA, UWGP requested that WDNR revise the pressure drop range in its permit.

45. On 3 days between March 4, 2011 and June 21, 2013, UWGP failed to achieve a pressure drop across the scrubbers within the range of 3 to 11 in H<sub>2</sub>O as required by Permit 10-DCF-137 condition 1.E.1.b.2.

46. On 281 days between November 13, 2007 and March 21, 2013, UWGP failed to achieve a scrubber water flow rate of 25 gpm for each scrubber as required by Permit 06-DCF-184 condition 1.E.1.b.3.

47. From November 13, 2007 until March 30, 2010, UWGP failed to meet the emission limit for acetaldehyde of 1.90 lb/hr from the fermentation process via the scrubbers as required by Permit 06-DCF-184 condition 1.E.4.a.1.

48. On 722 days between December 15, 2006 and June 21, 2013, UWGP failed to meet the temperature set point of 1400° F (1300° F for the summer months) for the Tanker Truck Loading Rack with flare as required by Permit 06-DCF-184 condition 1.F.1.b.3 and subsequently by Permit 08-DCF-120 (and all subsequent permits) condition 1.FF.1.b.3. After identifying the



issue in the NOV, and prior to meeting with EPA, UWGP requested that WDNR remove the requirement from its permit.

49. From January 22, 2011 until January 2, 2013, UWGP failed to prepare and maintain a MPAP as required by Permit 10-DCF-137 condition 1.ZZZ.3.a.

50. From April 2006 to November 15, 2011, UWGP failed to conduct annual inspections of storage tanks T61, T62 (denatured ethanol), T63, T65 (undenatured ethanol) and T64 (gasoline) as required by the NSPS, Subpart Kb at 40 C.F.R. § 60.113b(2), and Permit 06-DCF-184 condition 1.G.1.b.2.

51. From April 2006 to November 15, 2011, UWGP failed to keep records of annual inspections of ethanol storage tanks T61, T62 (denatured), T63, T65 (undenatured) and T64 (gasoline) as required by the NSPS, Subpart Kb at 40 C.F.R. § 60.115b(2), and Permit 06 DCF184 condition 1.G.1.c.4.b.

52. From November 13, 2007 until June 30, 2011, UWGP failed to demonstrate compliance with the standard as required by the NSPS Subpart VVa, 40 C.F.R. § 60.482-1a.

53. From May 13, 2008 until June 30, 2011, UWGP failed to submit semiannual reports as required by the NSPS Subpart VVa at 40 C.F.R. § 60.487a.

#### **Civil Penalty**

54. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, including UWGP's cooperation and return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$163,562.

55. Within 30 days after the effective date of this CAFO, Respondent must pay the \$163,562 civil penalty by Automated Clearinghouse electronic funds transfer, payable to "Treasurer, United States of America," and send to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

56. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Cynthia A. King (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

57. This civil penalty is not deductible for federal tax purposes.

58. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the

collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

59. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **General Provisions**

60. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

61. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

62. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 60, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

63. Respondent certifies that it is complying with the permit conditions and NSPS Subpart Kb and NSPS Subpart VVa regulations outlined above.

64. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

65. The terms of this CAFO bind Respondent, its successors and assigns.

66. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


67. Each party agrees to bear its own costs and attorneys fees in this action.

68. This CAFO constitutes the entire agreement between the parties.

69. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk.

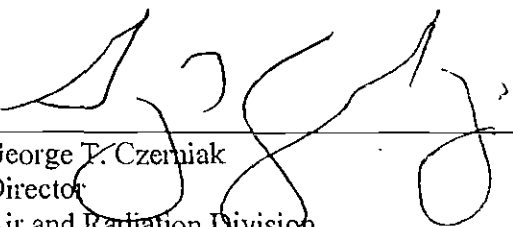
**United Wisconsin Grain Producers, LLC, Respondent**

4-25-2014  
Date

  
Barbara Bontrager, Chief Executive Officer  
United Wisconsin Grain Producers, LLC

**United States Environmental Protection Agency, Complainant**

5/16/14  
Date

  
George T. Czerziak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**

**In the Matter of: United Wisconsin Grain Producers, LLC**

**Docket No. CAA-05-2014-0029**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-19-2014

Date



Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**

**In the Matter of:** United Wisconsin Grain Producers, Friesland, Wisconsin

**Docket No.** CAA-05-2014-0029

**Certificate of Service**

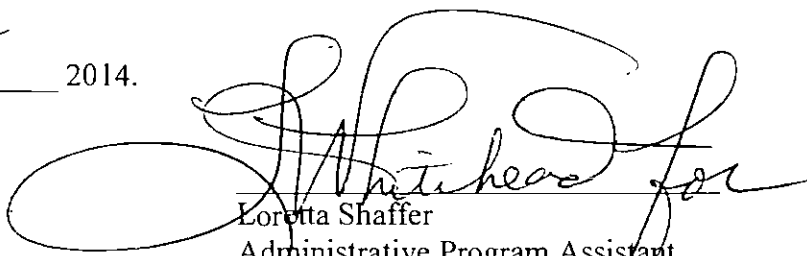
I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA 05 20140029 with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Barbara Bontrager  
Chief Executive Officer  
United Wisconsin Grain Producers, LLC  
W1231 Tessmann Drive  
Friesland, WI 53935

I also certify that I delivered a copy of the ACO and CAFO by intra-office mail, addressed as follows:

Ann Coyle  
Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

On the 21 day of May 2014.

  
Loretta Shaffer  
Administrative Program Assistant  
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7663 9620



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAY 28 2014**

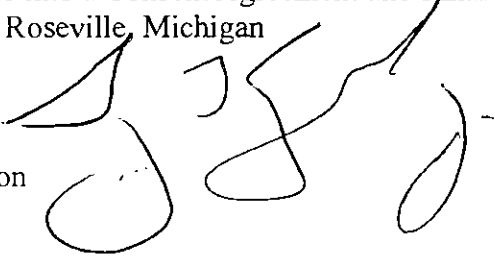
REPLY TO THE ATTENTION OF:

**MEMORANDUM**

**SUBJECT:** Recommendation to Enter into a Consent Agreement and Final Order with Howard Finishing, LLC, Roseville, Michigan

**FROM:** George T. Czerniak  
Director  
Air and Radiation Division

**TO:** Susan Hedman  
Regional Administrator

A large, handwritten signature in black ink is written over the "FROM" and "TO" fields. The signature appears to be "G. Czerniak".

I recommend that you sign that attached Consent Agreement and Final Order (CAFO) for Howard Finishing, LLC (Howard Finishing) to resolve violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412; and the implementing regulations at 40 C.F.R. Part 63, Subpart WWWW, the National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations (Subpart WWWW) at its Roseville, Michigan, facility. Specifically, Howard Finishing failed to control emissions from a microporous nickel tank at the facility in accordance with Subpart WWWW. The U.S. Environmental Protection Agency discovered these violations while inspecting the facility on May 6, 2010, and issued a Finding of Violation to Howard Finishing on August 30, 2012.

In a December 13, 2012, email, Howard Finishing stated that it begin measuring the surface tension of this tank on October 1, 2012, to ensure that the surface tension is within the range recommended by the tank bath supplier, at which time it came into compliance with Subpart WWWW.

EPA is issuing the APO concurrently with this CAFO. Under this CAFO, Howard Finishing will pay a civil penalty of \$25,000. The prefiling notice letter sought a penalty of \$92,060. Respondent raised an ability-to-pay defense, providing EPA with several years of filed tax returns and unaudited financial statements. After reviewing the financial documents, a Region 5 ability-to-pay expert determined that Respondent could not afford to pay any penalty with the necessary degree of certainty. Respondent had however offered \$25,000 in settlement, which EPA accepted and the respondent signed the CAFO prior to EPA finalizing its ability-to-pay decision.

For these reasons, I recommend that you sign the attached CAFO.